

**Thomas H. Billingslea, Jr.**  
CHAPTER 13 STANDING TRUSTEE

## **Supplemental Information**

### **Policy on Plan Length**

If you receive a letter from Mr. Billingslea's office prior to the 341a indicating that the plan exceeds the maximum length of 60 months feel free to request a Plan Length Worksheet from our office only if your calculation differs from ours. The Worksheet will be sent to you by fax.

### **Common Problems Upon Opening a Chapter 13 Case**

a. **Missing Pages**

For whatever reason there is a growing number of cases where some required paperwork is missing, including select pages of the schedules, plans, attorney fee disclosures, or the statement of financial affairs. In some cases it is because the copy machine missed a page. The original is on file at the Court but, not with our office. As a result we cannot fully analyze the case. We make attempts to contact counsel and request a faxed copy, however when there is no response, we are forced to treat the case as a Barebones. In cases missing an Attorney Disclosure, we assume \$1500.00 is the fee. All of these events cause delays. They could be eliminated by checking all copies before forwarding documents on.

b. **Internal Inconsistencies**

If a claim secured by personal property is provided for in paragraph 3 of the plan, the value in the plan should match the value set forth on schedule D. If the numbers do not match we are forced to estimate. If a claim secured by personal property is not specifically excluded in paragraph 12 of the plan, it is in fact "inside the plan" per paragraph 9. Many times we see an installment payment in the budget for an item, usually an automobile, which is not excluded in the plan. This usually results in a estimated length of over 60 months.

c. **Taxes**

Our office will presume that the entire tax claim is entitled to priority status. Case law is clear the Debtor bares the burden of proof on confirmation issues. If you have written evidence that the taxes are not entitled to priority please supply it as soon as possible. The mere fact that the return for a tax year was due more than three years pre-petition, does not by itself demonstrate a non-priority classification. Information which we should be provided: the date the tax was assessed, if there were any extensions granted to file the returns, if there was an offer in compromise pending, and any other tolling event. We

estimate the length of the plan based upon a priority tax classification. When a tax classification objection is made based upon length, counsel for the Debtor should confirm that all income tax returns have been filed.

d. IRS Letter of Unfiled Returns

In February, 1998 on certain cases the IRS commenced faxing to the Trustee's office its proof of claim prior to the 341(a) date. The IRS estimates liability for years that the Debtor has not filed a return. If the Trustee objects based upon length and your client files such outstanding returns, please ask Special Procedures to fax to the Trustee's office the amended proof of claim prior to the next hearing date.

e. Barebones

In order to set a First Meeting of Creditors, the ORDER FOR MEETING OF CREDITORS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAYS in most cases is served prior to the time a plan is actually filed. Two major issues often arise. First, only the creditors disclosed on the list of creditors filed with a barebones petition are noticed of the case's commencement. Even when undisclosed creditors appear on the subsequent schedules, these added creditors do not receive notice of the case. Second, because we do not have a plan at the time we serve the notice, we cannot summarize the treatment creditors can expect under the plan. Both issues can be resolved by the Debtor serving a copy of the plan, a blank proof of claim form, and a notice of when and where the First Meeting of Creditors will be held.

**Guidelines / "Split" Attorney's Fees**

If an attorney agrees to be paid from the estate concurrently with other claims, this can be accomplished in the following ways:

a. In the Plan

Add an additional paragraph to the plan which provides, "Notwithstanding any other provision of this plan, the Debtor's attorney fees shall be paid at the rate of not less than \$75.00 per month."

b. In the Order Confirming the Plan

If the desire to split fees is reached after the plan is filed, for instance at the first meeting of creditors, the provision above can be added as an addition to the order confirming the plan.

c. By Stipulation on the Record

Our office will also split the fee if the debtor's attorney indicates on the record, either at a First meeting of creditors or a hearing before the court, the amount of fees to be paid by the estate each month.

d. By Written Stipulation

This can be done at any time. Please provide our office with a copy of the entered stipulation.

e. By Informal Agreement

In some cases you may wish to avoid a motion for relief from stay by agreeing to a split fee provision. Our office will accept a written confirmation from the debtor's attorney on his or her letterhead.

**Zero Percent or Low Percent Plans**

Additional supporting documentation may be requested where the plan payment is less than ten percent (10%) of the monthly take-home pay of the debtor. The Trustee may request photocopies for three (3) months of bank statements, or utility bills, or both.

**Student Loans**

The Trustee will object if a student loan creditor is being preferred over other unsecured creditors during the first thirty six (36) months of the plan.

**Trustee's Position on IRS Household Budget Guidelines**

Neither Trustee (Skelton or Billingslea) has adopted or is adhering to the *IRS Household Budget Guidelines*. Rather the facts and circumstances of each case will be considered in determining the reasonableness of any budget line item.

**Settling Disposable Income Objections**

The Trustee has given his counsel settlement parameters in disposable income cases which places greater weight on increasing the dividend to unsecured creditors, than extracting the last few dollars in an increased plan payment. Debtors who wish to contribute to 401(k) plans, make charitable contributions, or pay private school tuition, should expect an objection in plans where the unsecured dividend is below seventy (70%) percent. (The Trustee, of course, reserves the right to object for such items, if excessive, in plans greater than seventy (70%) percent.

**Methods of Resolving Inadequate Post-Petition Tax Reserves**

The objection is best resolved by supplying proof of the quarterly payment to the IRS and/orFTB. The most recently due federal income tax return liability is given substantial weight in determining the amount of the quarterly payments required to be reserved.

**Objection Resolved & Request to Take Off Calendar**

After you have been informed by the Trustee's counsel that the submitted item(s) resolving the

Trustee's objection have been received, you may submit a stipulation *Acknowledging Resolution of Objection and Request to Take Matter Off Calendar*, and a *Confirmation Order*. Such stipulation should be used when at least twelve (12) days exist prior to the scheduled confirmation hearing date. Matters will only be considered to be taken off calendar if a pleading, such as a withdrawal of the objection by the objecting party, and a request to take the matter off calendar has been concurrently forwarded to the Court along with the submission of a *Confirmation Order* to the Trustee's office.

### **Chapter 13 Plan Payments and Modified Plans Prior to Confirmation**

Where the modified plan lowers the debtor's payments, the debtor must be current based upon the original plan payments that have come due, and any lower payments that have come due following the date the modification was **filed** with the Court. For the purpose of determining whether the debtor is current, the lower modified plan payments are **not computed retroactively** to the first payment date.

### **Confirmation Orders**

Local rules require the debtor or his/her counsel to prepare and deliver to the Trustee the *Confirmation Order*. If you have forgotten the prepared order, please consider completing one of the blank forms (by printing the required information) at the rear of the 341(a) Hearing Room.

### **The Ten Minutes Prior to Commencement of the Confirmation Hearings**

The Courtroom Deputy generally opens the court room twelve to fourteen minutes prior to the 10am and 2pm calendars. The ten minutes before each calendar should be utilized for last minute status checks with the Trustee for the purpose of determining whether an item may be treated as an "agreed upon disposition." Since the line may be ten persons long, the Trustee will not be able to discuss matters at length. Payment histories are placed on the "counsel table," separated by calendar time and marked by the assigned item number in red ink.

**All stipulated continuances at Confirmation hearings are subject to the debtor being current at the time of the hearing.**

### **Stipulations for Value of Collateral on Secured Claims**

If the claim has already been filed and the parties wish to stipulate to a different value, we must have a written stipulation. This is to avoid conflicting notices in the record. If the claim has not been filed, our office will accept oral stipulation on the record at a Court hearing or a first meeting of creditors.

### **Adequate Protection for Secured Claims in Light of Substantial Tax Claims**

The plan gives the Trustee wide discretion to limit payments to priority claims to provide adequate protection to secured claims. This discretion is exercised on a case by case basis taking into account the totality of the circumstances.

### **Guidelines for Applications to Purchase, Refinance, and/or Sell Property**

Upon written request our office will state our position in regard to the debtor's sale or purchase of property. As a practicable matter, most of these matters require an order from the Court. We will review and if appropriate, execute an ex-parte application. If we determine not to sign off on an ex-parte basis, we will disclose our objections or concerns. The determination is made on a case by case basis. Important factors which are considered include, but are not limited to the following:

a. **Sale or Refinance of Property**

If the Debtor wishes to sell property and pay off his or her plan, we would of course agree. However, if the plan has been pending less than 36 months and the unsecured claims are receiving less than 100%, we may move to modify the plan. The application should also indicate whether the sale is at arms length, include an estimated settlement statement, disclosed any motions for relief from stay, and any other relevant information. If the transaction will not benefit the plan, state in as much detail as possible the amount of money the debtor will realize, and the theory relied upon that this is not disposable income. This is not to suggest the Debtor may not liquidate exempt property. However, notice to all interested parties may overcome our concerns.

b. **Purchase of Real Estate**

Any application dealing with real estate should include an estimate of escrow costs. We generally take the position that Debtors should pay off their existing debts before incurring new ones. If there is a balance due to complete the plan and the debtors are making a cash down payment, our office would like to see the cash going to complete the plan. An objection is likely. Additionally, the value and terms of the purchase will be taken into consideration.

c. **Purchase of Automobiles**

We accept that during the three to five years a plan is pending automobiles will breakdown beyond repair, be totaled in an accident, lease terms will expire, cars may be stolen, etc. In many cases, the purchase and/or refinance of a replacement vehicle will require Court approval. As long as the year, make, model and terms are reasonable, the Trustee will not object.

### **Dial-In System**

This system has been implemented for convenience and is available to attorneys, creditors, and debtors. Once my office has been contacted, you will be assigned a password, and a "step-by-step" user packet to guide you through the system.

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- a. Hours  
For those of you who have access to the System please note that it is not available for use between the hours of 8:00 a.m. and 10:30 a.m. while the system is being downloaded with the previous day's information.
- b. Codes  
Copies of the Dial-In System Codes are available when you are assigned a password and user identification name.
- c. Need Access to the Dial-In System?  
For access to the Dial-In System please contact my office.
- d. Questions Most Frequently Asked Which Could Be Answered Using the Dial-In-System
  - \* Has the case been confirmed?
  - \* What is the total amount paid in by the debtor?
  - \* When was the last payment received from the Debtor?
  - \* When will creditors begin to receive payment?
  - \* What action will be taken if the debtor has stopped making payments?

**Michael Koch, Staff Attorney**

To expedite "meet and confer telephonic conferences," my Staff Attorney, Michael Koch, has a direct dial telephone and facsimile. His direct telephone number is 699-5717 and his direct fax number is 699-5716.

If you have any questions, comments or suggestions to improve case administration, please do not hesitate to advise me by a facsimile note.

Very truly yours,

Thomas H. Billingslea, Jr.

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